WABCO Construction and Mining Equipment Group, Division of American Standard, Inc. *and* **Scott N. Doty.** Case 33-CA-5363

24 May 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

Upon charges filed by Scott N. Doty, the Regional Director for Region 33 of the National Labor Relations Board on 12 May 1981 issued a complaint alleging that the Respondent, WABCO Construction and Mining Equipment Group, A Division of American Standard, Inc. (WABCO) violated Section 8(a)(1) of the National Labor Relations Act. The Respondent filed an answer to the complaint in which it admitted all allegations in the complaint, except it denied the commission of any unfair labor practice.

On 29 October 1981 the General Counsel, the Charging Party, and the Respondent entered into a stipulation in which they, inter alia, agreed to waive a hearing before a judge, the issuance of a judge's decision, and the presentation of any evidence other than that contained in the stipulation and exhibits there referred to. By order dated 11 January 1982, the Board denied the stipulation and remanded the proceeding to the Regional Director for further appropriate action. On 19 February 1982 the General Counsel, the Charging Party, and the Respondent entered into a revised stipulation of facts, and again requested that the case be transferred to the Board. By order dated 11 June 1982, the Board approved the revised stipulation and transferred the proceeding to the Board. Thereafter the General Counsel and the Respondent filed briefs with the Board.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case, including the parties' briefs, and makes the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

WABCO, a Delaware corporation, is engaged in the business of manufacturing construction and mining equipment at its office and place of business located in Peoria, Illinois, where it annually sells and ships from its Peoria plant finished products valued in excess of $50,000 directly to points outside the State. In agreement with the stipulation of the parties, we find that WABCO is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Scott N. Doty was employed by the Respondent as a production welder from about 25 November 1974 until about 6 November 1978. About 6 November 1978 Doty voluntarily quit his job with the Respondent for the purpose of assuming other employment.

On 4 January 1980 Doty filed a workmen's compensation claim with the State of Illinois Industrial Commission. His claim related to injuries sustained as a result of an accident which occurred on 25 August 1978, while he was working at the Respondent's facility in Peoria, Illinois.

On 8 September 1980 Doty applied for reemployment with the Respondent. About 14 November 1980 the Respondent, through its employee and community relations manager, Myrv Barnard,[1] told Doty he would not be rehired because he had filed the 4 January 1980 worker's compensation claim against the Respondent. Since about 14 November 1980 the Respondent has failed and refused and continues to fail and refuse to employ Doty.

The General Counsel contends that the Respondent violated Section 8(a)(1) of the Act by refusing to rehire Doty solely because he filed a workmen's compensation claim. In so doing, the General Counsel relies on the Board's decision in *Krispy Kreme Doughnut Corp.*, 245 NLRB 1053 (1979), enf. denied 635 F.2d 304 (4th Cir. 1980), which held that the filing of a worker's compensation claim by an individual is protected concerted activity.

The Respondent contends that Doty's conduct did not constitute concerted activity. We find merit in the Respondent's position.

In *Meyers Industries*, 268 NLRB 493 (1984), we held that "[i]n general, to find an employee's activity to be 'concerted,' we shall require that it be engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." In so doing, we overruled the precedent on which the General Counsel relies in this case.

The record establishes that Doty acted alone and solely on his own behalf when he filed his worker's compensation claim. Thus, the facts of the case do not support a finding that Doty engaged in concerted activity as defined in *Meyers*. Accordingly, we shall dismiss the complaint.

[1] The complaint alleges and the Respondent admits that Barnard is a supervisor within the meaning of the Act.

ORDER

The complaint is dismissed.

MEMBER ZIMMERMAN, dissenting.

As I recently stated in my dissent in *Meyers Industries*, the individual assertion of an employment-related statutory right is protected activity within the meaning of Section 7 of the Act. This case exemplifies the importance of protecting the individual employee's assertion of a right shared and created for employees as a group through the determination of the legislative process that such a right is in the public interest.

Workmen's compensation laws were not created to effectuate the assertion of the right to collect for individual injuries—these laws were created as an integral part of the effort to achieve job safety. Congress acknowledged this when it stated in the Occupational Safety and Health Act of 1970:

> The Congress hereby finds and declares that . . . the vast majority of American workers, and their families, are dependent on workmen's compensation for their basic economic security in the event such workers suffer disabling injury or death in the course of their employment; and that the full protection of the American workers from job related injury or death requires an adequate, prompt, equitable system of workmen's compensation as well as an effective program of occupational health and safety regulations. . . .[1]

For this reason it is proper to presume that the individual assertion of a workmen's compensation claim is supported by other employees who are equally exposed to the dangers of the workplace and equally interested in safe working conditions. Thus, to allow this employer lawfully to refuse work to Doty solely because he filed a workmen's compensation claim not only goes against the purpose of Section 7 of the Act but also defies the Supreme Court's mandate to the Board to administer the Act in accommodation with other employment legislation. I therefore conclude that the Respondent's refusal to rehire Doty violated Section 8(a)(1) of the Act.[2]

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[1] *Occupational Safety and Health Act of 1970*, Pub. L 95-25 § 27(a)(1)(A), 84 Stat 1590. See also *The Report of The National Commission on State Workmen's Compensation Laws* at 92-94 (1972), where it is stated:

> [W]orkmen's compensation laws contribute to the ultimate goal of job safety, as a result of . . . the financial stimulants inherent in the insurance rate making procedures used in every State. . . .

[2] See *Southern Steamship Co. v. NLRB*, 316 U.S. 31, 47 (1942), and my dissent in *Meyers Industries*, above, at 494.